CLERK'S COPY.

CERTIFICATE

Supreme Court of the United States

OCTOBER TERM, 1931

No. 574

GENERAL MOTORS ACCEPTANCE CORPORATION ET AL.

vs.

THE UNITED STATES OF AMERICA

ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

FILED DECEMBER 14, 1931.

(36,388)

(36,388)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1931

No. 574

GENERAL MOTORS ACCEPTANCE CORPORATION ET AL.

vs.

THE UNITED STATES OF AMERICA

ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

INDEX

	Original	Print
Certificate from United States circuit court of appeals, ninth circuit	1	1
Statement of case	2	1
Questions certified	3	3
Judges' signatures	5	5

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., DECEMBER 17, 1931

[fol. 1]

IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 6584

GENERAL MOTORS ACCEPTANCE CORPORATION, a Corporation, Intervener and Appellant,

vs.

UNITED STATES OF AMERICA, Libelant and Appellee; ONE (1) CHEVROLET SEDAN AUTOMOBILE, Engine Number 1-247-061, Respondent

GENERAL MOTORS ACCEPTANCE CORPORATION, a Corporation, Intervener and Appellant,

vs.

UNITED STATES OF AMERICA, Libelant and Appellee; ONE (1) CHEVROLET COUPE AUTOMOBILE, Engine Number 113-462, Respondent

GENERAL MOTORS ACCEPTANCE CORPORATION, a Corporation, Intervener and Appellant,

vs.

UNITED STATES OF AMERICA, Libelant and Appellee; ONE (1) CHEVROLET ROADSTER AUTOMOBILE, Engine Number 966-050, Respondent

HOWARD AUTOMOBILE COMPANY OF LOS ANGELES, a Corporation, Intervener and Appellant,

vs.

UNITED STATES OF AMERICA, Libelant and Appellee; ONE (1) BUICK COUPE AUTOMOBILE, Engine Number 2-083-140, Respondent

On Appeal from the District Court of the United States for the Southern District of California, Southern Division

[fol. 2] **Certificate of the United States Circuit Court of Appeals for the Ninth Circuit, under Section 239, Amended, of the Judicial Code [28 U. S. C. A. 346]—** Filed Nov. 30, 1931

STATEMENT OF CASE

The record presents four consolidated automobile forfeiture cases in which the same disputed legal questions are involved.

On four different dates during July and August, 1930, the four automobiles whose forfeiture is in issue were seized at ports of entry on the Mexican border, each vehicle having liquor concealed therein. Three of the cars were seized at San Ysidro, California, and the fourth at Calexico, California. Each car was observed crossing the international boundary line from Mexico and traveling some distance thereafter in the United States, and in each instance the concealed liquor was discovered at an official stopping place of the United States Customs Service. The seizures were effected by Customs officers.

All four drivers of the cars were arrested. Each was charged with violations of the Tariff Act of 1930; namely, unlawfully importing liquor into the United States, and knowingly concealing and facilitating the transportation of such liquor. Each indictment alleged failure to obtain a permit, failure to pay duties, and failure to make entry at the custom house. The four defendants entered pleas of guilty to the first count, which charged importation, and were sentenced by the court. In each case, the remaining count was dismissed.

A libel of information in rem was filed by the United States attorney against each automobile, claiming its forfeiture under the provisions of Sections 3061 and 3062 of the Revised Statutes [19 U. S. C. A. 482 and 483]. In three of the cases the General Motors Acceptance Corporation intervened as owner of the attached automobiles, and in the other case the vehicle was claimed by the Howard Automobile Company. All the interveners set up proof of ownership, averred that they were innocent of any illegal acts in which the vehicles may have been involved, and prayed the court to dismiss the libels, contending that the government's sole remedy was under Section 26, Title II, of the National Prohibition Act [27 U. S. C. A. 40].

[fol. 3] In each case, it was stipulated that the liquor alleged to have been found in the automobile was intoxicating in fact and fit for beverage purposes. It was further stipulated, subject to the objection by the libelant that such a purported defense was incompetent, irrelevant and immaterial, that neither the seller nor the intervener had any notice of the illegal use, or intended illegal use, of the automobile.

The government offered in evidence at the forfeiture proceedings the judgment roll, consisting of the indictment and sentence, in the criminal cases, at which, as stated above, pleas of guilty had been entered. The intervener in each case objected to the introduction of this judgment roll, on the ground that it was incompetent, irrelevant and immaterial; that no proper foundation had been laid; that the roll was not binding upon the intervener; and that it did not show that the intervener was a party to the criminal action or had notice of it. The objections were overruled and the records were admitted in evidence, to which the respective interveners duly excepted.

Testimony of customs officers showed that the four automobiles were driven across the international boundary some distance into the United States before being searched and seized.

The District Court entered decrees of forfeiture in all four cases, finding that each automobile "was engaged in smuggling dutiable merchandise into the United States in violation of the customs laws thereof".

All four interveners have appealed to this court.

For a proper decision of the above-entitled cause, now pending on appeal and submitted for consideration, instructions are respectfully requested of the Supreme Court of the United States in the following questions of law, concerning which we are in doubt:

QUESTIONS CERTIFIED

1. Does Section 26 of Title II of the National Prohibition Act repeal by implication and render inoperative in liquor importation and transportation cases the forfeiture provisions of the Customs Laws, in so far as offending vehicles are concerned? Or, putting the question in another form:

2. Do the mandatory provisions of Section 26 of the National Prohibition Act apply when the automobile has been seized while in the act of transporting intoxicating liquor across the border and some distance into the United States?

[fol. 4] 3. May the government, in such a case, ignore such mandatory provisions, arrest the driver, and elect to forfeit the automobile under the customs laws?

4. Is the record in the criminal case wherein the driver pleaded guilty of violating the customs laws [Tariff Act of 1930] admissible in the separate forfeiture proceedings wherein the intervener is the only party appearing, for the purpose of showing unlawful importation by the automobile, or for any other purpose?

In connection with the first three questions herein certified, we desire respectfully to make the following observation:

Since the Supreme Court of the United States handed down its decision in the cases of Richbourg Motor Company v. United States and Davies Motors, Incorporated v. United States, on May 19, 1930, reported in 281 U. S. 528-537, there has developed considerable divergence of opinion among the various District Courts and Circuit Courts of Appeal, as to the application of that decision to a state of facts identical or similar to that set forth herein; that is to say, to a case in which, as here, the entire proceedings were had under the provisions of the Tariff Act, the seizures having been effected by Customs officers.

We collate below a few cases in each group:

First, those holding that, in a state of facts identical or similar to that found in the instant cases, the Richbourg-Davies decision applies, and the officers must proceed under the less rigorous provisions of the National Prohibition Act, Title II, Section 26:

United States v. Ford Coupe Automobile (D. C. Fla.), 43 F. (2d) 212; United States v. One Studebaker Automobile (Exporters' Ins. Co., Intervener) (D. C. Ariz.), 45 F. (2d) 430; The Sebastopol-The Ruth Mildred; United States v. Soderberg (D. C., N. Y.), 47 F. (2d) 336; Colon v. Hanlon, Federal Prohibition Adm'r, et al. (C. C. A. 1), 50 F. (2d) 353. See also United States v. One Packard Motor Truck (D. C. Mich.) 284 F. 394, 396, and cases there cited.

Second, cases holding that the Richbourg-Davies decision does not apply, and that the officers need not proceed under the provisions of Section 26, Title II, of the National Prohibition Act:

[fol. 5] The Pilot (C. C. A. 4), 43 F. (2d) 491; United States v. One Fargo Truck (D. C. Tex.), 46 F. (2d) 171;

United States v. One Reo Coupe Automobile (D. C. Mass.), 46 F. (2d) 815; The Daisy (D. C. Del.), 48 F. (2d) 370.

Dated November 23, 1931.

Curtis D. Wilbur, William H. Sawtelle, Judges of the United States Circuit Court of Appeals for the Ninth Judicial Circuit.

[File endorsement omitted.]

A true copy. Attest December 1, 1931.

Paul P. O'Brien, Clerk. (Seal United States Circuit Court of Appeals, Ninth Circuit.)

Endorsed on cover: File No. 36,388. U. S. Circuit Court of Appeals, Ninth Circuit. Term No. 574. General Motors Acceptance Corporation et al. vs. The United States of America. Certificate. Filed December 14, 1931. File No. 36,388.